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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,759	10/02/2003	Sidney Edward Fisher	60,130-1900	4928

26096 7590 12/28/2005

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EXAMINER

BOSWELL, CHRISTOPHER J

ART UNIT PAPER NUMBER

3676

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/677,759	Applicant(s) FISHER, SIDNEY EDWARD	
	Examiner Christopher Boswell	Art Unit 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12,26,27 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12,26,27 and 29-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 26-27, and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Number 2002/0074809 to Fisher, in view of U.S. Patent Number 1,583,806 to Snyder.

Fisher discloses the invention substantially as claimed. Fisher discloses a door latch assembly having a release lever (18) movable about a release axis (B), a lock lever (24) movable about a lock lever axis (D), where the release lever and the lock lever are movable between a latched unlocked position (figure 1), a latched locked position (figure 2), and an unlatched position (figure 4), and a resilient assembly (28) connected between the release lever and the lock lever, where the force of the resilient member moves the release lever relative to the lock lever when the lock lever and the release lever are in the unlatched position (paragraph 38), as in claim 1, wherein the resilient assembly acts in a non-resilient manner when the release lever and lock lever move from the latched unlocked position to the latched locked position and vice-versa (paragraph 23), as in claims 2 and 3. However, Fisher does not disclose the feature of the resilient assembly. Snyder teaches of a resilient assembly having a first retainer (1) having a first seat (1c) and a first load application feature (3), a second retainer (2) having a second seat (2c) and a second load application feature (4), wherein the first seat and the second seat face each

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other (figure 1), and a resilient member (5), being a coil spring, as in claim 32, supported between the first seat and the second seat and positioned between the first load application feature and the second load application feature (figure 1) in the analogous art of resilient assemblies for the purpose of a resilient device that is readily yieldable in a lengthwise direction both under pulling and end-thrust strains for reducing incidental shock (lines 4-9). It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the resilient member of Snyder into the door latch assembly of Fisher in order to have the resilient member readily yieldable in a lengthwise direction both under pulling and end-thrust strains for reducing incidental shock.

Snyder further teaches of the first and second retainers both include a recess that receives a portion of the resilient member (figures 1 and 2), as in claim 4, as well as the recess having an additional seat (1b and 2b), and where the resilient member is mounted between the additional seat and the first and second seats (figure 1), as in claim 5, and where the additional seat and the first and second seat hold the resilient member in a pre-loaded position (lines 28-37), as in claim 6, and the additional seat comprises a first additional seat (1b) and a second additional seat (2b), and the first retainer comprises the first additional seat and the second retainer comprises the second additional seat, as in claim 7, where the first seat, the second seat, the first additional seat and the second additional seat are arranged to allow lost motion between the resilient member and one of the first retainer and the second retainer (lines 51-58), as in claim 8, and where the first seat, the second seat, the first additional seat and the second additional seat are arranged to preload the resilient member (lines 28-37), as in claim 9.

Snyder also teaches of the first retainer having a first projection (the rod that extends through the resilient member) that projects from the first seat and a first additional projection that projects from the first additional seat (the rod that extends through the resilient member), where the resilient member is mounted on the first projection and the first additional projection (figure 1), as in claim 10, as well as the second retainer having a second projection (the rod that extends through the resilient member) that projects from the second seat and a second additional projection the projects from the second additional seat (figure 1), and where the resilient member is mounted on the first projection and the first additional projection of the first retainer and the second projection and the second additional projection of the second retainer, where the first projection overlaps with the second projection (figure 2), as in claims 11 and 12, wherein the first retainer and the second retainer surrounds the resilient member (figure 1), as in claims 26 and 27. It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate features of the resilient member of Snyder into the door latch assembly of Fisher in order to have the resilient member readily yieldable in a lengthwise direction both under pulling and end-thrust strains for reducing incidental shock.

The limitations found in claim 29 are considered a product by process type limitation, wherein even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964,

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966 (Fed. Cir. 1985), where the first and second retainer of Snyder are substantially the same product as claimed, though they are formed by flattening a cylindrical rod (column 1, lines 38-45). Snyder further discloses the first and second retainers are a flattened metal to reduce the diameter of the spring required and to lessen the cross sectional dimensions of the device in the part having the greatest width, as in claim 30. It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate features of the resilient member of Snyder into the door latch assembly of Fisher in order to have the resilient member readily yieldable in a lengthwise direction both under pulling and end-thrust strains for reducing incidental shock.

Fisher and Snyder disclose the invention substantially as claimed. However, Fisher and Snyder do not disclose the first projection has a different length than the first additional projection, as in claim 31. It would have been obvious to one with ordinary skill in the art at the time the invention was made to lengthen or shorten either the first projection or the first additional projection, with respect to the other of the first projection or the first additional projection of the resilient member of Snyder into the door latch assembly of Fisher in order to have the resilient member readily yieldable in a lengthwise direction both under pulling and end-thrust strains for reducing incidental shock, as well as to adjust the location of the lost motion device with regards to the location of the tensile load.

Response to Arguments

Applicants' arguments filed on October 12, 2005 have been fully considered but they are not persuasive. The Applicants argue that the claimed invention is not obvious, and there is no motivation to employ the members of Snyder in the lock assembly of Fisher, as Snyder is directed to a large trailer hitch or towing rod, and it would not function in the small locking assembly of Fisher, the examiner respectfully disagrees. First, the examiner points to the above rejection, and notes there is no recitation regarding the size. Secondly, the rejection draws to the teachings of a lost motion device having a resilient member readily yieldable in a lengthwise direction both under pulling and end-thrust strains for reducing incidental shock, and thus the size has little bearing on the current rejection. Wherein the references are evaluated by what they suggest or teach to one with ordinary skill in the art rather than by their specific disclosure. Thus, the combination of Fisher and Snyder is considered to prevent the patenting of applicants' claimed invention.

Regarding the argument that Snyder is non-analogous art. The examiner respectfully disagrees. As stated in the prior Office action, mailed July 12, 2005, Snyder is analogous to the current invention in the art of resilient assemblies. Snyder discloses a resilient assembly that is pertinent to the particular problem of acting resiliently when a tensile force is applied to the assembly, wherein movement of a first seat and a second seat toward each other by application of the tensile force on a first load application and a second load application is resisted by the resilient member. The examiner admits Snyder is not in the same field of the applicant's endeavor, yet Snyder does pertain to the particular problem of the current invention, and thus is analogous art.

Regarding the argument that Snyder does not commend itself to an inventor's attention in considering the current problem because of the matter to which it deals, the examiner respectfully disagrees. Lost motion devices are found in numerous applications in today's society. Whether the lost motion device is found in a vehicle door latch assembly, a closure mechanism for a screen door, a movement attenuator device that is for use in a vehicle headlamp leveling system, or a towing device disposed between two vehicles, it is not unreasonable to assume an individual could take notice of a lost motion device in any application, and take advantage of the properties therein, by acting resiliently between two movable elements when a tensile force is applied to the assembly, wherein movement of a first seat and a second seat toward each other by application of the tensile force on a first load application and a second load application is resisted by the resilient member, by placing the device in another application of the user's requirements.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Boswell whose telephone number is (571) 272-7054. The examiner can normally be reached on 9:00 - 4:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CJB CB
December 14, 2005



BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER